IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:: O R D E R ::

S.B. CIVIL WRIT PETITION NO.711/1998

Baboolal Kiradu
Vs.
State of Rajasthan and Ors.

DATE OF ORDER :: 20.9.2007

PRESENT

HON'BLE MR. BHANWAROO KHAN, J.

Mr. Arjun Purohit, for the petitioner.
Mr. O.P. Rathi, Deputy Govt. Advocate.

By the instant writ petition the petitioner has challenged the order dated 28.2.1998 (Annex.-9) superannuating him from service treating his date of birth as 1.3.1940 whereas in fact his correct date of birth as per record is 1.3.1942.

Brief facts of the case are that the petitioner was appointed as School Teacher in the year 1959 and at the time of appointment as per school certificate his date of birth was entered as 1.3.1942. First time in the year 1992 show cause notice was issued to him about the change of date of birth from 1.3.1940 to 1.3.1942, to which he replied that his date of birth as per school certificate is 1.3.1942.

The respondents without conducting any preliminary enquiry about the change of his date of birth treating his date of birth as 1.3.1940, superannuated him on 28.2.1998 whereas the Rules prescribed that the certificate issued by the Municipality, Panchayat or School will be relevant at the time of entry into service and the date of birth declared by the person concerned at the time of appointment may be accepted. As per school record and the entry in the service record, the respondents have committed a mistake by treating his date of birth as 1.3.1940 whereas his actual and correct date of birth is 1.3.1942, so he prayed for quashing the order dated 28.2.1998 superannuating him from the service.

In reply the respondents submitted that at the very initial stage of appointment the date of birth of the petitioner was entered as 1.3.1940. The service record, state insurance form and seniority list published by the respondents bears the petitioner's date of birth as 1.3.1940 and the petitioner himself declared his date of birth as 1.3.1940 and whatever date of birth was recorded at the time of initial appointment was relevant and material declaration, but the same was manipulated and changed from 1.3.1940 to 1.3.1942 by interpolating the same. An enquiry was conducted by the Seniority Deputy District Education Officer, who opined that the tempering of the Government record is manifest and it

has been changed by making number '0' into '2' and thus made it 1.3.1942, but from the record, it is actually 1.3.1940 and treating the same to be correct, the petitioner was superannuated on 28.2.1998 after attaining age of 58 years. Hence, the petitioner was rightly retired.

Heard learned counsel for the parties.

Learned counsel for the petitioner pleaded that at the time of initial appointment as per school certificate his date of birth is 1.3.1942 and without giving any opportunity of hearing and explaining the change in the date of birth, the respondents illegally superannuated him on 28.2.1998 from service. Whatever change, if any, took place in the date of birth is not at all his responsibility. Why and how the date of birth in the service record was initially recorded as 1.3.1940, he is not aware and also not responsible. The school certificate of Amar Shahid Sagarmal Gopa Government Higher Secondary School, Jaisalmer (Raj.) describe his date of birth as 1.3.1942 and the same was tendered at the time of appointment to the concerned authorities. The show cause notice about change of date of birth was replied by him in which he specifically mentioned that the concerned authority may further obtain the school certificate of concerned school which only bears his date of birth as 1.3.1942 and all the relevant Government record also speak of

the same. Any enquiry if conducted at his back is not relevant. Hence, the order passed by the respondents treating his date of birth as 1.3.1940 and superannuating him from service is illegal, arbitrary and have no force of Rules.

Learned counsel for the respondents pleaded that at the time of entering into the service, the date of birth of the petitioner was recorded as 1.3.1940, but later on by interpolation, number '0' was converted into number '2' and thus, made the date of birth as 1.3.1942 whereas the service record clearly and specifically mentioned the age as 1.3.1940. The enquiry conducted by the Senior Deputy District Education Officer also found that in the petitioner's date of birth, change was made by making number '0' to number '2' and thus, interpolated the date of birth and made it as 1.3.1942. He opined that at the time of appointment, the petitioner should have given his age 1.3.1940 because from 1.3.1942 he could not have been appointed being under age. But later on, the date of birth was changed from 1.3.1940 to 1.3.1942.

The service-sheet, seniority list and insurance declaration form all bears the petitioner's signature and date of birth as 1.3.1940 and bare perusal of the service-sheet reveals that the petitioner's date of birth was changed from 1.3.1940

to 1.3.1942 by making number '0' into number '2'. The original record of the service-sheet if looked by naked eyes reveals his date of birth as 1.3.1940 and not as 1.3.1942. The change and interpolation is clear from bare perusal. The service-sheet, insurance declaration form and verification attached with the service-sheet done by the Deputy Inspector of School also reveals the date of birth of the petitioner as 1.3.1940. Except the insurance declaration form rest of the service record has been forged by making number '0' into number '2'. Thus, making the entire date of birth as 1.3.1942.

Learned counsel for the petitioner argued that the school certificate bears his date of birth as 1.3.1942 which is of no avail to him because from very initial stage at the time of appointment it was the petitioner himself who gave the date of birth as 1.3.1940 and that bears the signature of the petitioner himself. The same is the case in the insurance declaration form which also reveals his date of birth as 1.3.1940. The interpolation is also clear that the date of birth of the petitioner was changed from 1.3.1940 to 1.3.1942.

After submission of the writ petition, the Court ordered on 28.10.1998 that after perusing the original record a reasonable apprehension has arisen regarding manipulation of the original date of birth

and it was submitted that the petitioner is responsible for making this manipulation. For determining the controversy involved in the facts and circumstances of the case, the matter was referred for investigation to the Superintendent of Police, Jaisalmer, who may get the matter investigated and was asked to submit the report. The Superintendent of Police concerned without going into any investigation of the matter after recording the statement of one Bhanwar Lal Bhatiya, concerned clerk at the relevant time submitted that the date of birth of the petitioner entered in the school register is 1.3.1942 and it was Bhanwar Lal Bhatiya, who interpolated this by making number '0' into number '2' and got the signature of the District Education Officer. Learned counsel relied on this and submitted that it was not the petitioner at any time, who forged and manipulate this entry, but the department concerned himself has converted number '40' into number '42' on the basis of school record. So his actual date of birth is 1.3.1942 not 1.3.1940.

This arguments of the learned counsel for the petitioner is not any avail to him because to get change the date of birth certain procedure has to be followed as per rule. Shri Bhanwar Lal Bhatiya was simply a clerk and not the competent authority, he himself without following any procedure or any permission from the competent authority changed the

date of birth and made the entry himself by making number '0' into '2' and got the note appended that as per school certificate, change is being done which also bears the signature of District Education Officer and this change was done in December, 1969. Shri Bhanwar Lal Bhatiya was not competent authority to get the date of birth changed in the service record if there was any change to be made then Bhatiya should have moved to the competent authority for getting change his date of birth from 1.3.1940 to 1.3.1942, but without any sanction or permission of the competent authority, Shri Bhatiya himself as per his statement interpolated number '0' into number '2' and made the date of birth as 1.3.1942 which cannot be approved as it was done against the Rules and procedure. The respondents rightly treated the petitioner's date of birth as 1.3.1940 and superannuated him from service by treating his correct date of birth i.e. 1.3.1940 and by doing so neither any illegality nor any irregularity was committed by the respondents. Whatever date of birth was entered initially at the time of appointment and bears the signature of the petitioner himself was the correct date of birth and this was treated by the respondents as correct date of birth.

Resultantly, there is no force in the writ petition and the same deserves to be dismissed.

The writ petition stands dismissed. There shall be no order as to costs.

(BHANWAROO KHAN)J.

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